IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.34129 of 2003
and
WPMP No.41377 of 2003
and
WVMP No.53 of 2004

V.Manivasagam .. Petitioner

Versus

1. The District Revenue Officer,
   Thanjavur.

2. The Revenue Divisional Officer,
   Kumbakonam.

3. The Tahsildar,
   Papanasam.

4. K.Govindan

5. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 104. .. Respondents

Writ Petition filed under Article 226 of The Constitution of India to issue a Writ of certiorari calling for the records of the fifth respondent in O.A.No.3914 of 1993 dated 22.09.2003 and quash the same.

For petitioner : Mr.G.Rajan
For R1 to R3 : Mr.M.Dhandapani,Spl.G.P.
For R4 : Mr.M.Christopher

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O R D E R

(Order of the Court was made by F.M.IBRAHIM KALIFULLA,J.)

The petitioner is aggrieved against the order of the State Administrative Tribunal dated 22.09.2003 passed in O.A.No.3914 of 1993.

2. The brief facts which are required to be stated are that the petitioner and the fourth respondent applied for the post of Village Assistant of Neithalur Village, Papanasam Taluk. The petitioner came to be appointed for the said post by an order of appointment dated 29.07.1991. The order of appointment stated that the petitioner had passed tenth standard and that previously he had temporarily worked as an Assistant, apart from the fact that he was living in that village itself. On the above grounds, the appointment of the petitioner was preferred. Aggrieved against the order of appointment issued to the petitioner, the fourth respondent preferred an appeal before the second respondent. The second respondent, after considering the appeal and after hearing the petitioner held that the petitioner attained the age of 21 years only on 09.04.1991 and therefore, his past temporary experience when he was below the minimum age cannot be taken into account.

3. As far as his educational qualification was concerned, the second respondent held that he did not pass tenth standard since in the School certificate itself it is mentioned that he left the school while doing his tenth standard. That apart, it was held that since the petitioner suppressed the pendency of a criminal case at the time when he made the application in 17.07.1991, he was disqualified from being considered for appointment to the post of Village Assistant, even though the said criminal case in C.C.No.497 of 1991 ended in the acquittal of the petitioner. While setting aside the order of appointment, the second respondent appointed the fourth respondent herein. Aggrieved against the order of the second respondent dated 20.02.1993, the petitioner preferred a revision before the first respondent. The first respondent took note of the fact that the petitioner himself having produced the Transfer Certificate wherein it is specifically mentioned that he left the school while doing his tenth standard, the reference in the appointment order to the effect that he had passed tenth standard was the mistake of the Tahsildar for which the petitioner cannot be blamed.

4. As far as the criminal case was concerned, the first respondent accepted the stand of the petitioner that as on the date when he applied for the post, no criminal case was pending and that the summons in the criminal case itself was issued to him after the issuance of the appointment order. The first respondent therefore held that there was no suppression of any material fact by the petitioner as concluded by the second respondent. Since the petitioner was a native of Neithalur Village

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itself, the first respondent by order dated 07.05.1993 held that the petitioner's appointment made by the Tahsildar on 29.07.1991 was justified and so saying, the order of the second respondent was set aside. The fourth respondent herein preferred O.A.No.3914 of 1993 challenging the said order of the first respondent. The Tribunal agreed with the view of the second respondent and held that the appointment order issued to the petitioner is bound to be set aside. The Original Application was allowed and the appointment of the petitioner was set aside by the Tribunal. Aggrieved against the same, the petitioner has come forward with this writ petition.

5. Mr.G.Rajan, learned counsel appearing for the petitioner took us through the Transfer Certificate issued to the petitioner by the School in support of his stand, that in the said Certificate in column No.10 which specifically mentions as to the class in which the concerned student was studying at the time when the Transfer Certificate was issued, wherein it is stated that the petitioner was doing his tenth standard at that point of time. The learned counsel for the petitioner therefore contended that when the petitioner produced the Certificate which has also been referred to by the second respondent in his order, there was no reason for the petitioner to claim that he passed tenth standard for the purpose of securing the appointment.

6. As far as the criminal case is concerned, the learned counsel brought to our notice the summons issued by the Judicial Magistrate No.II, Thanjavur in C.C.No.497 of 1991 which was dated 06.08.1991. The said summons specifically state that the petitioner was charged under Sections 147 and 323 I.P.C. and that he should appear before the Court at 10 a.m. on 23.08.1991. The date of the summons itself was 06.08.1991. The learned counsel therefore contended that as on 29.07.1991 the petitioner was not aware of any criminal proceedings alleged to have been lodged against him by Tmt.Sowbagyavathi by way of a private complaint. The learned counsel would therefore contend that the conclusion of the first respondent by accepting the above material while setting aside the order of the second respondent did not call for any interference and therefore, the order of the Tribunal is liable to be set aside.

7. As against the said statement, Mr.Christopher, learned counsel appearing for the fourth respondent would contend that prior to the issuance of the summons dated 06.08.1991, the petitioner would have definitely been called by the police for an enquiry in pursuance of the complaint made by Smt.Sowbagyavathi and therefore, the petitioner ought to have referred to the same when he made the application on 17.07.1991. The learned counsel then contended that when the second respondent has made a specific finding that the petitioner claimed himself to have passed tenth standard, it should be held that such a representation was a clear misrepresentation of fact and therefore, on both the grounds the cancellation of the order of appointment was justified and the same should not be interfered with.

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8. Mr.M.Dhandapani, learned Special Government Pleader referred to the counter affidavit filed by the first respondent and contended that both the grounds on which the second respondent set aside the order of appointment of the petitioner is without any basis and therefore, the order of appointment issued to the petitioner and confirmed by the first respondent in his order dated 07.05.1993 should be restored.

9. Having heard the learned counsel for the respective parties and on a perusal of the material papers placed before us, we are convinced that the order of appointment issued to the petitioner in the order dated 29.07.1991 did not call for any interference. As rightly contended by the learned counsel for the petitioner, when the Transfer Certificate made it clear that the petitioner was doing his tenth standard at the time when he left the School and when the Certificate was very much on record at the time of issuance of order of appointment dated 29.07.1991, the second respondent was not justified in making a contrary statement that the petitioner claimed himself to have passed tenth standard. For making such a statement there was no acceptable evidence before the second respondent. There was no other document other than the Transfer Certificate issued by the School or any oral statement said to have been made before any other authority to the effect that the petitioner had passed tenth standard and he claimed as such for the purpose of securing the appointment to the post of Village Assistant. In such circumstances, the conclusion of the second respondent on that score was rightly interfered with by the first respondent in his order dated 07.05.1993.

10. Similarly, as regards the criminal complaint which was lodged against the petitioner, the summons itself make it very clear that it was issued only on 06.08.1991. Even assuming for the sake of argument that the petitioner was called by the Police to the Station on any date prior to 06.08.1991, in the first place, there is nothing on record to show that he was called on any particular date prior to the issuance of the appointment order dated 22.07.1991. In any case, merely because a person was called to the Police Station for holding some enquiry, that by itself cannot be taken to have resulted in any criminal case having been registered against him and therefore, there was a bounden duty on the person concerned to disclose the said fact in his application for appointment. Therefore, the petitioner cannot be blamed for the non intimation about the criminal case in his application dated 17.07.1991. As on that day or even prior to 29.07.1991, no criminal case was pending against him in order to state that there was any suppression of the pendency of any such criminal case preferred against him. Therefore, the said factor cannot also be put against the petitioner in order to interfere with the order of appointment issued to him.

11. As far as the age factor namely that as on 09.04.1991 only he attained the age of 21 years and therefore, any experience said to have been gained by him prior to that date cannot be taken into account, we

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hold that even if the said experience is eschewed from consideration, inasmuch as the petitioner was fully qualified and there was no other disqualification suffered by him, the order of appointment dated 29.07.1991 cannot be interfered with. Therefore, looked at from any angle, we are convinced that the order of the first respondent dated 07.05.1993 was perfectly justified in restoring the order of appointment issued to the petitioner on 29.07.1991. The Tribunal, unfortunately failed to appreciate the relevant documents before reaching its conclusion about suppression of fact and alleged misrepresentation against the petitioner. We are therefore obliged to interfere with the order of the Tribunal. The writ petition stands allowed. The order of appointment of the petitioner dated 29.07.1991 is therefore confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gms

To

1. The District Revenue Officer,
   Thanjavur.

2. The Revenue Divisional Officer,
   Kumbakonam.

3. The Tahsildar,
   Papanasam.

4. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 104.

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+ 1 CC To Mr. M.Christopher, Advocate SR NO.42681

+ 1 CC to the Government Pleader SR NO 42710

W.P.No.34129 of 2003

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gp/23.7.

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